

United States Senate

WASHINGTON, DC 20510

May 19, 2017

421

Hon. Ajit Pai
Chairman
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Dear Chairman Pai:

We write in response to a very disturbing report that Federal Communications Commission (FCC) security personnel manhandled, threatened further physical violence, and ejected a respected Washington journalist after a news conference at the FCC headquarters in Washington, D.C., on May 18, 2017.

Given the FCC's role as the primary authority for communications law and its regulatory role with respect to the media, the FCC should set a sterling example when it comes to supporting the First Amendment and freedom of the press for other government entities here in the United States and around the world. As we discussed at the Senate Committee on Commerce, Science, and Transportation's March 8, 2017, oversight hearing,¹ this is particularly important given recent disturbing incidents involving the Trump campaign and Trump Administration.

Yet, according to a report by the National Press Club,² John M. Donnelly of CQ Roll Call and chairman of the National Press Club's Press Freedom Team "ran afoul of plainclothes security personnel at the FCC when he tried to ask commissioners questions.... Throughout the FCC meeting, the security guards had shadowed Donnelly as if he were a security threat.... They even waited for him outside the men's room at one point."

Even more disturbingly, the National Press Club description of the incident states that, "[w]hen Donnelly strolled in an unthreatening way toward FCC Commissioner Michael O'Rielly to pose a question, two guards pinned Donnelly against the wall with the backs of their bodies until O'Rielly had passed. O'Rielly witnessed this and continued walking. One of the guards, Frederick Bucher, asked Donnelly why he had not posed his question during the press conference. Then Bucher proceeded to force Donnelly to leave the building entirely under implied threat of force." According to this report, Mr. Bucher was involved in at least one other incident involving harassment of a journalist at an FCC meeting last year.³

¹ "Oversight of the Federal Communications Commission." Committee on Commerce, Science, and Transportation. U.S. Senate. Mar. 8, 2017. available at: <https://www.commerce.senate.gov/public/index.cfm/hearings?ID=B9D3B299-E3CC-480A-B09B-1DEF0512A57C>, accessed May 19, 2017.

² Schoo, Julie. "Reporter manhandled by FCC guards because he asked question." National Press Club. May 18, 2017. available at: <http://www.press.org/news-multimedia/news/reporter-manhandled-fcc-guards-because-he-asked-question>, accessed May 19, 2017.

³ *ibid.*

Yesterday's incident at the FCC is not an isolated one and seems to be a part of a larger pattern of hostility towards the press characteristic of this Administration, which underscores our serious concern. Recent examples that make this most recent incident a new low point in a disturbing trend are enclosed with this letter.

So we ask that you please respond in writing by Friday, May 26th and, at a minimum, include:

1. A detailed description of the facts and circumstances of the May 18th incident at FCC headquarters;
2. A thorough explanation of any inappropriate physical contact, aggression, or threats against reporter John M. Donnelly by FCC security staff or other FCC officials while at FCC headquarters;
3. An explanation of any potential misconduct or wrongdoing by FCC security personnel or other FCC officials on May 18th;
4. A description of FCC security policies for public events including but not limited to speaking events featuring an FCC Commissioner; and
5. Your assurance that an incident such as the alleged physical restraint of reporter John Donnelly will not happen again.

We further request that you review FCC security policies for public events and speaking engagements and whether FCC staff and security personnel are aware of such policies and adequately trained. We ask that you submit a written report within 60 days to the Senate Committee on Appropriations and the Senate Committee on Commerce, Science, and Transportation that includes this review and an explanation of any changes to security and training policies you will undertake following the May 18th incident.

Thank you for your consideration and prompt reply.

Sincerely,



Tom Udall
United States Senator



Margaret Wood Hassan
United States Senator

encl: Recent Incidents of Threats and Physical Restraint of Journalists by the Trump Campaign and Administration

cc: Hon. Michael O'Rielly, Commissioner, Federal Communications Commission
Mr. David L. Hunt, Inspector General, Federal Communications Commission

Recent Incidents of Threats and Physical Restraint of Journalists

By the Trump Campaign and Administration

- March 2016: Then-candidate Trump's campaign manager at the time, Cory Lewandowski, was charged with battery by police in Jupiter, Florida, for physically grabbing a reporter who sought to ask candidate Trump a question after a press conference at the Trump National Golf Club. The Trump campaign denied any contact until video evidence surfaced that substantiated the reporter.¹
- Campaign 2016: During his campaign rallies, then-candidate Trump routinely urged crowds to direct verbal abuse at reporters covering the election. Numerous incidents of verbal abuse and threats followed, forcing many media organizations to incur security expenses to protect their reporters from the risk of physical violence.²
- February 2017: President Trump accused the press of being the "enemy of the people."³
- February 2017: During an appearance at a conservative policy conference, White House Chief Strategist Stephen Bannon dubbed the press "the opposition party" and that "it's going to get worse every day for the media."⁴
- February 2017: According to reports this week, a February memo by then-Director of the Federal Bureau of Investigation, James Comey, President Trump pressed him to prosecute leaks, including journalists who publish the leaked information.⁵
- March 2017: In a Senate Commerce Committee hearing, you declined to defend the free press or denounce President Trump's assertion that media organizations—which you now oversee and regulate as FCC Chairman—are "enemies of the people." We appreciate that you later responded in the negative to a written version of a similar question.⁶
- April 2017: White House Chief of Staff Reince Priebus confirmed on national television that the Trump Administration has researched whether it could change libel laws or other constitutional press protections, in response to news reports about Russia's interference in the 2016 election and possible ties to the Trump campaign.⁷

¹ <http://www.foxnews.com/politics/2016/03/29/report-trump-campaign-manager-charged-with-battery-over-reporter-incident.html>

² <https://www.nytimes.com/2016/10/15/us/politics/trump-media-attacks.html>

³ <https://www.washingtonpost.com/news/worldviews/wp/2017/02/18/trump-called-the-news-media-an-enemy-of-the-american-people-heres-a-history-of-the-term/>

⁴ <https://www.washingtonpost.com/news/the-fix/wp/2017/02/23/steve-bannons-not-so-subtle-threat-to-the-media/>

⁵ <https://www.nytimes.com/2017/05/17/business/media/trumps-urging-that-comey-jail-reporters-denounced-as-an-act-of-intimidation.html>

⁶ <http://www.latimes.com/business/la-fi-fcc-pai-media-enemy-20170320-story.html>

⁷ <http://money.cnn.com/2017/04/30/media/reince-priebus-libel-laws/>

- May 2017: Last week, a well-known West Virginia reporter who covers politics in the state capitol was arrested while asking Department of Health and Human Services Secretary Tom Price questions about the House passed-bill to repeal the Affordable Care Act. He spent eight hours in jail and was forced to post a \$5,000 bond.⁸
- May 2017: A CNN reporter received a threatening phone call from Secretary of State Rex Tillerson's communications adviser R.C. Hammond, in which Hammond demanded that she reveal her sources and accused her of not being "smart enough to handle our information."⁹
- May 2017: The White House did not allow U.S. news organizations to cover President Trump's meeting with Russian Foreign Minister Sergey Lavrov and Russian Ambassador Sergey Kislyak but the Russian state-run TASS media company was allowed in to photograph the event.¹⁰

⁸ <http://www.wvgazettemail.com/news/20170517/press-agency-condemns-arrest-of-journalist-at-wv-capitol>

⁹ <https://www.facebook.com/michelle.kosinski.14/posts/10154848242099565>

¹⁰ <https://www.usatoday.com/story/news/2017/05/10/trumps-meeting-russians-closed-us-media-but-not-tass-photographer/101520384/>



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

June 2, 2017

The Honorable Tom Udall
United States Senate
531 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Udall:

Thank you for your May 19th letter requesting information both about security practices at the FCC and more specifically about the incident between Commission security and John Donnelly of CQ Roll Call on May 18th following an FCC open meeting. Before discussing the details of this incident, it is important to emphasize that the Commission has apologized to Mr. Donnelly for what transpired. I sincerely regret that there was any physical contact between Mr. Donnelly and one of the Commission's security officers. Due to these events, we have already taken steps to minimize the chances of a similar event occurring in the future.

To provide context for the information I am providing, I should note at the outset that neither I nor anyone in my office witnessed the incident. Nor are there any video cameras in the hallway outside the Commission meeting room where this incident took place. The description below of what apparently happened is based entirely upon our interviews with the FCC personnel involved and their recollections of the event.

At the May 18th meeting, Commissioners were voting on a Notice of Proposed Rulemaking (NPRM) entitled *Restoring Internet Freedom*. The issues contained in this NPRM have been the source of significant public debate for several years. Individuals and groups of individuals have disrupted FCC open meetings to draw attention to their point of view on this topic in the past, including a disruption involving several people at the FCC's previous open meeting on April 20th. In addition, leading up to the May 18th meeting, there have been several protests held outside of the FCC and the Chairman's residence. Additionally, numerous threats directed towards the FCC have been received since the Commission's April 20th open meeting, including death threats targeted specifically to one or more members of the Commission. As a result, at the FCC's May 18th open meeting, the FCC's security team was operating under heightened awareness for potential disruptions and threats before, during, and after the meeting. Furthermore, given these threats, the FCC's security team was working to protect the Chairman and Commissioners so they could enter and exit the Commission meeting and post-meeting press conference in a safe and secure manner.

As with all attendees at a Commission open meeting, Mr. Donnelly showed proper photo identification when entering the FCC building and then was asked to pass through the FCC's security screening system before heading into the Commission meeting room. As a member of the press, Mr. Donnelly sat in the area that the FCC reserves for members of the press to guarantee that they have access to open meetings.

The Commission's meeting room is on the ground level of the FCC's headquarters, and there are adjacent parts of the ground level that are not open to the public unless the visitor is escorted by an FCC employee. As with other open meetings, the FCC's security team on May 18th was working to ensure that none of the attendees tried to enter to those restricted areas, either intentionally or unintentionally. After the FCC meeting concluded, however, one of the Commission's security officers saw Mr. Donnelly attempting to enter a restricted area of the building, notwithstanding a sign clearly indicating that the area

was not open to visitors. The officer asked Mr. Donnelly to return to the public area. A few minutes later, that same security officer saw Mr. Donnelly standing by the building's north elevator bank in what he perceived to be an attempt to take an elevator to another floor. Because visitors to Commission meetings are also not allowed to go to other floors on an unescorted basis, the security officer asked Mr. Donnelly what he was looking for. When Mr. Donnelly said that he was trying to find a restroom, the security officer pointed out the location of the restroom to him and then stood outside of it to ensure that, given the prior interactions, Mr. Donnelly did not attempt either intentionally or unintentionally to go into a restricted area of the building when he exited. This is the backdrop against which the incident between the Commission's security personnel and Mr. Donnelly occurred.

Due to the heightened potential for disruptive conduct at the May 18th meeting, and in particular the death threats that had been received, the FCC's security team took a protective position, placing themselves between the Chairman and Commissioners and any members of the public seeking to approach them, as they entered and exited the FCC's meeting room. This has been standard operating procedure at the agency for years in these types of heightened threat level instances.

After his post-meeting press conference, Commissioner O'Rielly exited the Commission meeting room and entered the hallway, accompanied by his three legal advisors. At this point, Mr. Donnelly attempted to approach Commissioner O'Rielly. Neither Commissioner O'Rielly nor any of his legal advisors knew that Mr. Donnelly was a reporter, and they were surprised to learn of that fact later that day.

One security officer was standing between Mr. Donnelly and Commissioner O'Rielly, and was facing Mr. Donnelly. This security officer explained to Mr. Donnelly that Commissioner O'Rielly did not wish to answer questions outside of his press conference, and there was no physical contact between this security officer and Mr. Donnelly. A second security officer was between Mr. Donnelly and Commissioner O'Rielly, but had his back to Mr. Donnelly. When Commissioner O'Rielly passed by, this security officer stepped back and backed into Mr. Donnelly. This physical contact was inadvertent. Nevertheless, it should not have occurred, the Commission has apologized for it, and as noted herein we are taking corrective action. We are aware that Mr. Donnelly has claimed that he was pinned against the wall of the hallway by the FCC's security personnel. Both of the FCC security officers involved in this incident have adamantly denied this claim in interviews about this incident, and none of the five witnesses we have interviewed have corroborated Mr. Donnelly's version of events.

Following the incident in the hallway outside the Commission meeting room, Mr. Donnelly proceeded through the security controls and sat down in the building's 12th Street lobby. An FCC security officer approached Mr. Donnelly and asked him if his business at the Commission was completed. Mr. Donnelly initially responded "yes," but then said "no," and that he wanted to see the FCC's "public affairs officer." The security officer asked Mr. Donnelly if he had an appointment, and he replied "no." At that point, the security officer asked Mr. Donnelly to leave the building.

The physical contact between one of the Commission's security officers and Mr. Donnelly should not have occurred. This is true even though the security officials say that the contact was inadvertent. Likewise, following the incident, Mr. Donnelly should not have been asked to leave the building. The Commission has apologized for these mistakes, has taken corrective steps, and is continuing to take steps to minimize the chances that they will happen again.

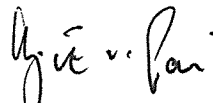
At the same time, the Commission's security officers have a difficult job to do, particularly in cases where the FCC is facing violent threats. These are career, non-political officers who have served at the agency for many years and under different Administrations. The FCC's security officers are responsible for the safety of our staff and must take the staff's safety into consideration as we conduct open meetings and public events. Moreover, the use of a protective position by the security team with respect to the Commissioners was not unique to the May 18th meeting or to my tenure as Chairman.

While the incident with Mr. Donnelly should not have happened and appropriate counseling has been provided to the Commission's security staff, the investigation does not show that the FCC's security team had any malicious intent nor that they intended to have any physical contact with Mr. Donnelly. Rather, their actions were intended to protect Commissioner O'Rielly.

In sum, the incident with Mr. Donnelly should not have happened. The FCC has publicly apologized to Mr. Donnelly, and has counseled the Commission's security staff. Furthermore, we have instructed security officers that the Commission will not physically engage anyone that comes to a Commission open meeting, unless they are purposefully disrupting the meeting or they pose a threat to the safety of FCC employees. Finally, we have made it clear that reporters should not be asked to leave those areas of the FCC's headquarters that are open to the public. In sum, the FCC will work to avoid the circumstances of the security's team encounter with Mr. Donnelly in the future.

Thank you for the opportunity to respond to the concerns raised in your letter. The Commission is committed to operating in an open and transparent manner and welcomes public input and congressional input, as well as media inquiries about the Commission's rulemakings and activities.

Sincerely,

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Ajit V. Pai
Chairman



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

June 2, 2017

The Honorable Maggie Hassan
United States Senate
330 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Hassan:

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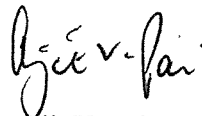
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Ajit V. Pai
Chairman